IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 974 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL PINAKINBHAI RAMESHBHAI
Versus
THE STATE OF GUJARAT

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Appearance :
MR ASHISH M DAGLI for Applicant
MR AY KOGJE APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 06/07/2006

ORAL JUDGMENT

1 Heard learned Advocate Mr. Ashish M. Dagli for petitioner and learned APP Mr. A.Y. Kogje for respondent – State. RULE. Waived by learned APP Mr. A.Y. Kogje. The matter was heard, and upon requests of learned Advocates, has been decided.

2 As per brief facts of the case, present petitioner gave an FIR against the accused under Sections 302, 396, 34, etc for the robbery committed and causing murder of his mother Madhuben. A crime came to be registered as Crime Register No. I-153/2006 before Satellite Police Station. In the said crime, police recovered stolen muddamal from the accused on very next day and they were committed to judicial custody. In the said proceeding, present petitioner being complainant preferred an application before learned Judicial Magistrate, First Class, on 17th of March, 2006, under Section 451 of the Code of Criminal Procedure for interim custody of muddamal ornaments, etc to the complainant. Learned Magistrate vide order dated 03rd of April, 2006 allowed the application partly and except ornaments of silver and gold, remaining muddamal was directed to be handed over to the complainant by way of an interim custody while application came to be rejected so far as ornaments of gold and silver was concerned.

3 Complainant being aggrieved, preferred Criminal Revision Application No. 26 of 2006 in the Court of learned Sessions Judge, Ahmedabad (Rural). However, the said Revision came to be dismissed vide order dated 26th of May, 2006, delivered by Additional Sessions Judge, Fast Track Court No. 6, Ahmedabad (Rural) and hence this Application.

4 From going through the record and evaluating the contentions of learned Advocates, it is established from the record that the gold and silver ornaments and jewellery belong to the petitioner and a robbery was committed at his house and his mother was murdered. Learned Magistrate has noted that none of the accused claimed the interim custody of the said muddamal and, therefore, it appears that so far as prima facie ownership of the jewellery is concerned, there is no much dispute. In those circumstances, having regard to the ratio laid down by the Supreme Court in the matter of SUNDERBHAI AMBALAL DESAI vs. STATE OF GUJARAT, as reported in 2003 (1) GLH 307, so far jewellery and ornaments of gold and silver, should be handed over to the petitioner in the above mentioned circumstances. There is no reason, whatsoever, to prevent interim custody of the said muddamal to the petitioner under Section 451 of the Code of Criminal Procedure with certain conditions.

5 In this view of the matter, this Application is allowed. The interim order of the learned Magistrate as confirmed by the Revisional Court refusing interim custody of gold and silver ornaments to the petitioner is hereby set aside. It is directed that the said muddamal articles i.e. gold and silver jewellery and ornaments seized in the said crime be handed over to the present petitioner by the learned Magistrate on condition that the petitioner

shall maintain the status of the muddamal as it is and in its original condition and shall produce the same before the Trial Court as and when so directed. The learned Magistrate shall get a detailed proper panchnama prepared of such muddamal articles and take photographs of said articles which should be countersigned and attested by the petitioner. Learned Magistrate shall also take a bond and proper security of the amount deemed fit by the Magistrate before handing over the interim custody of the said muddamal articles to the petitioner. Rule made absolute accordingly. DS permitted.

(J. R. VORA, J.)

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